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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1958

No. 171

WILLIAM JOSEPH HANLON,

Petitioner,

against

WATERMAN STEAMSHIP CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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The petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above cause on April 2, 1959.

Opinions Below

The opinion of the United States District Court for the Southern District of New York, dated July 29, 1958 is unreported.

The opinion of the Court of Appeals in this case is reported at 265 F. 2d 206.

Jurisdiction

The judgment of the Court of Appeals was entered on April 2, 1959. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Question Presented

Has the Court of Appeals for the Second Circuit correctly interpreted an Act of Congress (46 U. S. C. Sec. 745) [1] in holding that an injured seaman has no cause of action against a corporation operating ships for the United States Government as a General Agent, irrespective of the fact that the General Agent is charged with its own negligence and personal tort?

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[1] § 745. Causes of action for which suits may be brought; limitations; exceptions; actions which may not be revived; interest on claims

"Suits authorized by this chapter may be brought only on causes of action arising since April 6, 1917: Provided, That suits based on causes of action arising prior to the taking effect of this chapter shall be brought within one year after this chapter goes into effect; and all other suits hereunder shall be brought within two years after the cause of action arises; Provided further, That the limitations in this section contained for the commencement of suits hereunder shall not bar any suit against the United States or the United States Shipping Board Emergency Fleet Corporation, brought hereunder on or before December 31, 1932, if such suit is based upon a cause of action whereon a prior suit in admiralty or an action at law or an action under section 250(1) of Title 28, was commenced prior to January 6, 1930, and was or may hereafter be dismissed because not commenced within the time or in the manner prescribed in this chapter, or otherwise not commenced or prosecuted in accordance with its provisions; Provided further, That such prior suit must have been commenced within the statutory period of limitation for common-law actions against the United States cognizable in the Court of Claims: Provided further, That there shall not be revived hereby any suit at law, in admiralty, or under sections 40(20), 250, 251, 254, 257, 258, 287, 289, 292, 761-765 of Title 28 heretofore or hereafter dismissed for lack of prosecution after filing of suit; And provided further, That no interest shall be allowed on any claim prior to the time when suit on such claim is brought as authorized hereunder. March 9, 1920, c. 95, § 5, 41 Stat. 526; June 30, 1932, c. 315, 47 Stat. 420."

Reason for Granting the Writ

It seems that the Senate Report,[2] rather than the language of the Act itself,[3] which has omitted a great deal of the language of the Senate report, has been used (improperly interpreted) for the dismissal of the complaint in the case at bar and in other cases similarly decided.

1. THERE IS A CONFLICT OF AUTHORITY:

The case of *Arnold* v. *Luckenbach Steamship Company*, 160 F. Supp. 807, decision by Judge Dimock, is authority for suit against the General Agent.

The cases of *Richardson* v. *American President Lines*, 144 F. Supp. 641 and *Atlantic Coast Line R. Co.* v. *Agwilines, Inc.*, 195 F. 2d 459, hold to the contrary.

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[2] Senate Report No. 1782, June 7, 1950 (To accompany H. R. 483) House Report No. 1292, Aug. 22, 1949 (To accompany H. R. 483), contained in U. S. Code Congressional Service, 81st Congress, Second Session, 1950, Legislative History (p. 4209) at page 4210:

> "The law, however, did not legislatively settle the question of exclusivity of remedy. The Supreme Court then, in 1942, in Brady v. Roosevelt Steamship Company (317 U. S. 575), held that the Suits in Admiralty Act, by furnishing as in personam remedy against the United States, did not free the agent from liability for the torts of its employees.
>
> This case was followed in 1946 by the Court's decision in Hust v. Moore-McCormack (328 U. S. 707). These cases together were popularly taken as an endorsement by the highest court in the land of the theory of duality of remedy in all cases. Accordingly, many litigants, relying upon these decisions, brought their suits against the agent only because of the opportunity for a jury trial which many of them preferred. Then the Supreme Court handed down its decisions in Caldarola v. Eckert (332 U. S. 155 (1947)) and Cosmopolitan Shipping Co. v. McAllister (335 U. S. 870 (1949)), which clarified, in the opinion of the committee, the rule previously announced so as to make it plain that the agent, while liable for the negligence of its own employees, was not liable for the negligence of the civil-service masters and crews with whom the United States manned the vessels. For the negligence of those, the United States was the only responsible party."

[3] See footnote 1 on page 2.